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Educational Consortium for
Telecommunications Savings

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REQUEST FOR FCC REVIEW AND WAIVER OF RULE

September 12, 2003

Federal Communications Commission
Office of the Secretary
445 - 12th Street, SW
Washington, DC 20554

CC Docket No. 02-6

Request For Review

Request for Waiver

Subjects: 1) request for waiver of 60 day rule on appeals to the Schools and Libraries Division and FCC review of "Administrator's Decision on Appeal" Dated July 21, 2003.

2) request for FCC review of "Funding Commitment Decision Letter" to Dunellen School District Dated May 12, 2003 denying funding due to application of the "30% ineligible services rule" to "unsubstantiated charges."

Funding Year: 2003-2004

Applicant Name: Dunellen School District (New Jersey)

Form 471 Number: 362385

Billed Entity Number: 123508

Contact Information: Ronald K. MacClay

133 N. State Street

Newtown, PA 18940

Voice Number: 215-504-5046

Fax Number: 215-504-5047

e-mail: rmacclay@e-rate-ects.org

Dear Reader:

This letter is being provided to the FCC on a timely basis to 1) request that the FCC waive the 60 day rule for submittal of appeal to the Schools and Libraries Division to allow the SLD to accept our appeal dated July 17, 2003, six days after the 60 days allowed, and 2) to request that the FCC review the SLD's decision to deny funding for FRN #982289 because "30% or more of this FRN includes a request for unsubstantiated charges which are ineligible per program rules and a request for filtering service which is an ineligible service per program rules."

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I have been asked by the District to handle their future e-rate applications and to represent them in the original appeal to the SLD (attached) and these current requests to the FCC for waiver and review relative to FRN #982289.

In order for the FCC to best understand our request for waiver of rules to allow our appeal to be considered by the SLD, we will first describe the underlying issue that resulted in the denial of funding and our current request for FCC review of that denial. We will then present information regarding our request for waiver.

Request for review of underlying issue

The crux of the issue regarding funding of the FRN is that applicants were not given notice before the submittal of their applications that the rule that "if 30% or more of a funding request is for ineligible services the entire funding request will be denied" would be extended by the SLD to include "unsubstantiated charges" as well. In prior practice, if an applicant's funding request was inadvertently or for good reason too high upon SLD review, the applicant was allowed to reduce the request prior to the funding decision by the SLD. Often, ineligible charges were allowed to be removed as well to allow the FRN to be funded. We believe that prior notice of any change, especially the inclusion of "unsubstantiated charges" in the 30% rule, should have been given to applicants. Failing this notice, applicants should have at least been given the opportunity during the normal review process to correct such situations in mutual good faith.

Before describing the specifics of Dunellen's funding request and its handling, we would also state that some applicants were allowed to reduce their 2003-2004 funding requests during the SLD review process after their 471 was submitted in order to eliminate the problem with the newly-applied "30% unsubstantiated rule" that would have resulted in their entire FRN being denied. As you will see, the SLD reviewer did ask Dunellen to request in writing that their original funding request be reduced. Dunellen then made this request in good faith, but the amount requested was not reduced, the new interpretation of the 30% rule was applied, and the requested funding was denied in toto.

As to the specifics, the services covered by FRN #982289 are Internet Service/512K Frame Relay, primarily, at an annualized cost of \$6,630. as shown on the attached invoice that was also provided during the SLD review. Also included in the funding request, in hindsight inappropriately, was Internet filtering at \$1,800. annualized cost.

The original funding request was for \$4,800. or 50% of total expenses of \$9,600. The original funding request was based on an anticipated price increase for the services that had been communicated by the provider. However, after the 471 had been submitted the provider ultimately agreed to lower the 2003-2004 price of the same services to help

the district with budgetary constraints. The District, in all honesty, reported this during the SLD review. The District then requested the FRN be reduced to \$8,430. total expense or \$4,215. in funding in response to the request of the SLD reviewer. (See attached memo from SLD reviewer dated 2-21-03 and District response dated 2-24-03.) Dunellen's response did include their irritation that the filtering expense was not eligible. However, as you will see, the inclusion of the ineligible expense in the funding request did not exceed the 30% threshold for the entire FRN to be denied either compared to the original total expense of \$9,600. or the lowered amount of \$8,430.

Notwithstanding Dunellen's request for the funding amount requested to be reduced to the (now) substantiated amount with the provider's reduced pricing, the FRN was processed at the original total expense of \$9,600. and not funded due to the new interpretation of the "30% ineligible" rule. Not only was the reduction in funding requested not implemented by the SLD reviewer, even though this had been requested by the SLD reviewer, but the District was never contacted about this until they received the funding denial letter, dated May 12, 2003.

While we understand the SLD's desire to conduct expedited application reviews, we believe that the new rule or interpretation of the 30% rule was not communicated before or during the application window or during the review process. Had the "30% unsubstantiated" rule not been applied, the admittedly incorrect inclusion of the \$1,800 for Internet filtering would have been less than the 30% threshold of \$2,880. (30% of \$9,600) or the 30% threshold of \$2,529. (30% of the reduced expenses of \$8,340. with the provider's price decrease) for the 30% ineligible services rule to be properly applied. The bottom line is that the FRN would have been approved, and we believe it should be approved.

Because of these considerations, most particularly the fact that the rule was changed without proper notice being provided to the applicant community, we respectfully request that the FCC instruct the SLD to approve the funding of FRN #982289 at the demonstrated level of eligible expense. The District's 2004-2005 application will not contain such unsubstantiated charges now that we are aware of the new rule or rule interpretation.

Request for waiver

The 60-day timing for appeal of this funding denial was not met because the Dunellen School District was not aware even after the fact that there was a new rule or interpretation by the SLD that had resulted in funding denial. The District was not aware that the rule had been changed or that it may have been applied inappropriately. Nor were they aware that other applicants may have been allowed to change their original funding request to avoid the 30% problem while Dunellen was not given this opportunity.

Because there was no notification by the SLD to applicants of the issue with regard to the new application of the 30% rule and the likelihood of funding denial being reversed upon appeal, as we feel should have occurred to correct the situation equitably among all applicants, we respectfully request that the 60 day requirement for submittal of appeals be waived in this case.

In short, lack of information that should have been provided was a primary impediment to the timely provision of the appeal. This resulted in a lack of understanding of the SLD's decision, including the reasoning, and the basis for an appeal.

We feel that these special circumstances warrant a deviation from the general rule and that such deviation would better serve the public interest than strict adherence to the general rule.

In addition, we know of at least one state (not Dunellen's state of New Jersey) where the E-rate coordinator with the state's department of education notified all of their schools to appeal, and how to appeal, the application of the 30% rule to unsubstantiated charges and that such denials could be expected to be reversed upon appeal. The sense was, certainly, that the SLD had recognized the unfairness of the lack of prior notification and that such situations would be corrected. However, no general notice was given to applicants regarding such appeals on an even-handed basis. It was only through contact with the Education Consortium, an E-rate application consultant, that Dunellen ever became aware of the full situation and the need for an appeal. Unfortunately, this did not occur until the 60 day period for appeal had just expired. The attached appeal was quickly prepared and submitted but it was six days late.

Again, public interest is best served in even-handed communication and fairness among applicants in the administration of this important funding source for schools. We do not feel that the SLD operated in bad faith, but we do respectfully submit that the outcome needs to be changed in the public interest and in accordance with the objectives of the E-rate Program itself.

The funding is needed by the District, especially during this year of tight budgets for most schools. Loss of the funds would adversely impact the students within the District.

Please contact me should you need any further information.

Sincerely,



Ronald K. MacClay for Dunellen School District
Certified Mail #7002315000073998787 Return Receipt Requested
CC: Mr. Vincent J. Olivo, Dunellen Public Schools



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal

July 21, 2003

Ronald K. MacClay
Dunellen School District
133 N. State Street
Newtown, PA 18940

Re: Application Number: 362385
 Funding Year: 2003-2004
 Date of Issuance of
 Funding Commitment Letter: 05/12/2003
 Date Appeal Received: 07/17/2003

Our records show that your appeal was received more than 60 days after the date your Form 471 Certification-Rejection Letter was issued (see dates above). The Federal Communications Commission (FCC) rules require applicants to submit appeals so USAC/SLD receives them within 60 days of the date that the relevant Funding Commitment Decision Letter was issued. (See "Appeals Procedure" at <http://www.sl.universalservice.org/reference/AppealsProcedureYR4.asp>) The FCC rules do not permit the SLD to consider your appeal. If you wish to continue this process, you may submit a new appeal via the United States Postal Service, stating the impediment to your filing your appeal within the original time, to the FCC at the following address:

Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Washington, DC 20554

If you are submitting your appeal to the FCC by means other than the United States Postal Service, check the SLD web site for more information. Please reference CC Docket Nos. 96-45 and 97-21 on the first page of your appeal. **The FCC must RECEIVE your appeal WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER for your appeal to be considered filed in a timely fashion.** Further information and new options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site, www.sl.universalservice.org, or by contacting the Client Service Bureau at 1-(888)-203-8100

Schools and Libraries Division
Universal Services Administrative Company



Universal Service Administrative Company
Schools & Libraries Division

FUNDING COMMITMENT DECISION LETTER

(Funding Year 2003: 07/01/2003 - 06/30/2004)

May 12, 2003

DUNELLEN SCHOOL DISTRICT
VINCENT J. OLIVO
HIGH ST & LEHIGH ST
DUNELLEN, NJ 08812

Re: Form 471 Application Number: 362385
Funding Year 2003: 07/01/2003 - 06/30/2004
Billed Entity Number: 123508
Applicant's Form Identifier: 2003 - ISP

Thank you for your Funding Year 2003 E-rate application and for any assistance you provided throughout our review. Here is the current status of the funding request(s) featured in the Funding Commitment Report at the end of this letter.

- The amount, \$4,800.00 is "Denied".

Please refer to the Funding Commitment Report on the page following this letter for specific funding request decisions and explanations.

NEW FOR FUNDING YEAR 2003

The Important Reminders and Deadlines immediately preceding this letter are provided to assist you throughout the application process.

NEXT STEPS

- Review technology planning requirements
- Review CIPA Requirements
- File Form 486
- Invoice the SLD using the Form 474 (service providers) or Form 472 (Billed Entity)

FUNDING COMMITMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Report for the Form 471 application cited above. The enclosed report includes a list of the Funding Request Number(s) (FRNs) from your application. The SLD is also sending this information to your service provider(s) so preparations can be made to begin implementing your E-rate discount(s) upon the filing of your Form 486. Immediately preceding the Funding Commitment Report, you will find a guide that defines each line of the Report.

TO APPEAL THIS DECISION:

If you wish to appeal the decision indicated in this letter, your appeal must be RECEIVED BY THE SCHOOLS AND LIBRARIES DIVISION (SLD) WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify which Funding Commitment

FUNDING COMMITMENT REPORT

Form 471 Application Number: 362385
Funding Request Number: 982289 Funding Status: Not Funded
Services Ordered: Internet Access Service Provider Name: Pan United Corporation
SPIN: 143005574
Contract Number:
Billing Account Number: N/A
Earliest Possible Effective Date of Discount: 07/01/2003
Contract Expiration Date: 06/30/2004
Annual Pre-discount Amount for Eligible Recurring Charges: \$9,600.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00
Pre-discount Amount: \$9,600.00
Discount Percentage Approved by the SLD: N/A
Funding Commitment Decision: \$0.00 - Incl. svcs./ or product(s)
Funding Commitment Decision Explanation: 30% or more of this ERN includes a request for unsubstantiated charges which are ineligible per program rules and a request for filtering service which is an ineligible service based on program rules.



Educational Consortium for
Telecommunications Savings

LETTER OF APPEAL

July 17, 2003

Letter of Appeal
Schools and Libraries Division
Box 125 – Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

Subject Appeal of Notice of “Funding Commitment Decision Letter” to Dunellen School District DUE TO APPLICATION OF THE “30% UNSUBSTANTIATED RULE”

Funding Year 2003-2004
Applicant Name Dunellen School District
Form 471 Number 362385
Billed Entity Number: 123508
Contact Information: Ronald K. MacClay
133 N. State Street
Newtown, PA 18940
Voice Number: 215-504-5046
Fax Number 215-504-5047
e-mail: rmacclay@e-rate-ects.org

Dear Reader:

This letter is to appeal the SLD's funding commitment decision not to fund FRN #982289 because “30% or more of this FRN includes a request for unsubstantiated charges which are ineligible per program rules and a request for filtering service which is an ineligible service per program rules.”

I have been asked by the District to handle their future e-rate applications and to represent them in this appeal. We are requesting that the decision to deny funding for FRN #982289 be reversed by the SLD and that the funding for this FRN be approved.

The 60-day timing for appeal of this funding decision has not been met because the District was not aware that the 30% rule may have been applied inappropriately in this and in similar cases without prior notification to applicants. This appeal has been prepared within several days of the District (applicant) becoming aware of this issue. We believe that there should have been notification of the rule change prior to its application,

and that there should have been specific notification to schools that negative decisions due to the application of the "30% unsubstantiated" rule should have been notified of their specific right to appeal

The services covered by FRN #982289 are Internet Service/512K Frame Relay, primarily, at an annualized cost of \$6,630 as shown on the attached invoice that was also provided during the SLD review. Also included in the funding request, in hindsight inappropriately, was Internet filtering at \$1,800 annualized cost

The original funding request was for \$4,800 or 50% of total expenses of \$9,600. The original funding request was based on an anticipated price increase for the services. However, ultimately the provider agreed to the lower price to help the district with budgetary constraints. The District, in all honesty, reported this during the SLD review. The District then requested the FRN be reduced to \$8,430 total expense or \$4,215 in funding in response to an SLD request. (See attached memo from SLD reviewer dated 2-21-03 and District response dated 2-24-03.)

The FRN was processed at the original total expense of \$9,600, and not funded due to the new interpretation of the "30% ineligible" rule. The reduction in funding requested was never done even though this had been requested by the SLD reviewer, and the District was never contacted about this. While we understand the SLD's desire to conduct expedited application reviews, we believe that a new interpretation of the rule was not communicated before or during the application window or during the review process. Had the "30% unsubstantiated" rule not been applied, the admittedly incorrect inclusion of the \$1,800 for Internet filtering would have been less than the 30% threshold of \$2,880 (30% of \$9,600) for the 30% ineligible services rule to be properly applied. The bottom line is that the FRN would have been approved, and we believe it should be approved.

Because of these considerations, most particularly the fact that the rule was changed without proper notice being provided to the applicant community, we respectfully request that this appeal be accepted and the decision to disallow funding of FRN #982289 be reversed and funding approved for our request. The District's 2004-2005 application will not contain such unsubstantiated charges.

The funding is needed by the District, especially during this year of tight budgets for most schools. Loss of the funds would adversely impact the students within the District.

Please contact me should you need any further information.

Sincerely,



Ronald K. MacClay for Dunellen School District

Certified Mail #

Return Receipt Requested

7002 3150 0000 7399 8626

Feb-21-03 02:25P

P.01

PAN-UNITED CORP.

No.2, ETHEL ROAD, SUITE 203B
DURHAM CENTER
EDISON, NJ 08817
TEL. (732) 287-4488
FAX (732) 287-5511

FROM : **David Lin**

Date: Jan 31, 2003

Mr. Vicent Olivo, Business Administrator
Dunellen Board of Education
Ph: (732)968-3226 Fax: (732)968-3513

Internet Service Provider for 512K Frame Relay Service	\$6630
One year internet content filtering services	\$1800

** This is for the internet service starting July 1, 2003 to June 30, 2004

Vince Olivo

From: "Helen Seryakova"
To: <olivov@dunellenschools.org>
Sent: Friday, February 21, 2003 5:35 PM
Subject: E-rate appl. # 362385

Dear Vincent J. Olivo,

Thank you for the quote. But the quote amount does not support the amount of the funding request. Please provide the support for your funding request, or send me a letter asking to reduce the request to the \$8460 level.

Sincerely,

Helen Seryakova
Schools & Libraries Division
PIA Associate
Tel : (973) 581 - 6715
Fax : (973) 599 - 6523

E-Mail: YSeryak@SL.UniversalService.org

DUNELLEN PUBLIC SCHOOLS

High Street and Lehigh Street
Dunellen, New Jersey 08812
Telephone (732)-968-3226
Fax: 732-968-3513

Dr. Joyce F. Baynes
Superintendent of Schools

Mr. Vincent J. Olivo
School Board Secretary/
Business Administrator

February 24, 2003

Ms. Helena Seryakova
Schools and Libraries Division
80 South Jefferson Road
Whippany, New Jersey 07981

RE: APPLICATION # 362385

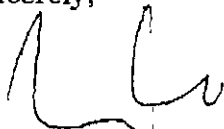
Dear Ms. Seryakova:

Please reduce the request for this application to \$8,430.

I might add that \$1,800 of this is for Internet content filtering services which I understand is not eligible even though the SLD requires that I sign off on CIPA stating we absolutely have it. Please inform your supervisor that I think this is the ultimate in hypocrisy and is utterly ludicrous.

If you have any questions, do not hesitate to call.

Sincerely,



Vincent J. Olivo
Business Administrator/
Board Secretary

VJO/dp